

REMARKS

Claims 1-31 and 62 were pending, all of which were rejected. Claims 1 and 19 have been amended. Claim 22 has also been amended to correct syntax. No new matter has been added in the claims.

Claim Rejections – 35 U.S.C. §102

Claims 1-8, 10-14, 19, 20, 22, 23, and 25-30 were rejected under 35 U.S.C. §102(b) as being anticipated by Rao (US 2002/0025547) (“Rao”). Reconsideration is requested.

In the Response to Arguments, the Examiner disagreed with the Applicant’s argument that the “opening” and the “aperture through the at least one surface of the well” are two distinct elements. The Examiner stated that claims 1 and 19 do “not specifically state that the aperture and the opening of the well can not be the same or on the same surface of the well.”

Claim 1 has been amended to specifically recite “wherein the at least one aperture through the at least one surface of the well is different than the opening of the cavity that is defined by the at least one surface”. Claim 19 has similarly been amended to specifically recite “wherein the first aperture through the at least one surface of the well is different than the opening at the top of the well that is defined by the at least one surface”. Support for this amendment is found through out the specification, and in particular in Figs. 2, 3A, 3B, 4, 5A, and 5B and the supporting text.

Applicant submits that the amendment merely makes explicit what was already implicit in the claim and therefore does not narrow the claim. The broadest reasonable interpretation of a claim should not be so broad as to render the claim indefinite. Applicant submits that the Examiner’s interpretation is so broad as to result in the double inclusion of the same element, i.e., the “opening” of the cavity that is “defined by at least one surface” is the same element as the “at least one aperture through the at least one surface of the well”. Applicant submits that the double inclusion of an element such as this renders the claim unclear and therefore indefinite. Consequently, Applicant submits that the Examiner’s interpretation, which is so broad as to result in an indefinite double inclusion of an element, is not a reasonable interpretation. Applicant believes that the broadest reasonable interpretation of the claim would avoid such a double inclusion, and therefore, the proper interpretation of the claim is that the “opening” and the “aperture” are separate elements. Accordingly, the

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present amendments do not narrow the claims, but rather merely restate what was already claimed.

Applicant respectfully submits that claims 1 and 19 are patentable over Rao. Reconsideration and withdrawal of this rejection is respectfully requested. Claims 2-8, and 10-14 depend from claim 1 and claims 20, 22, 23, and 25-30 depend from claim 19 and are, therefore, likewise patentable.

Claim Rejections – 35 U.S.C. §103

Claims 15-17, 21, 24, 31 and 62 were rejected under 35 U.S.C. §103(a) as being unpatentable over Rao in view of Olivier (2003/0219360) (“Olivier”). Reconsideration is requested.

Olivier fails to make up for the deficiencies of Rao. Olivier discloses at paragraph [0025] that “each well has a drain 33 formed in the bottom of the well, preferably centrally located therein. The drain allows fluid (usually filtrate) in the well to escape and potentially be collected such as by a collection plate.” Olivier does not disclose an aperture in a surface of the well that is “configured to provide a gas supply access to the interior of the well”. Moreover, there is no rationale basis to modify Rao based on Olivier to configure an aperture in a surface of the well for a gas supply. Accordingly, even when combined, Rao and Olivier do not teach all the limitations of claims 1 and 19.

In the Remarks to Arguments, the Examiner states that “Olivier does not state that this direction of flow is unidirectional, therefore given its broadest interpretation, the direction of flow is two way, which means that this aperture can indeed be used for a gas supply.”¹ In other words, the Examiner’s position is that because the cited reference does not explicitly state that a drain for fluids flows in only one direction, the drain can be used for a gas supply.² Applicant respectfully disagrees and requests reconsideration. The Examiner’s position ignores the express disclosure of Olivier that the “drain 33” is just that, a drain for fluids.

¹ Applicant points out that fluids are gravitationally drawn through the drain and therefore, contrary to the Examiner’s assertion, the direction of flow through the drain is only one way. Moreover, even if the direction of flow of the fluids through the drain 33 may be in two directions, this simply means that fluid flows into the well, not that gas is supplied to the well through the drain 33.

² The Examiner also argues that the use of the drain is “not limited to just filtrate”. Applicant points out that the reference to “filtrate” in Olivier is to describe the type of fluid that is drained. See, paragraph [0025]. Thus, while other fluids may be drained through drain 33, it is usually filtrate.

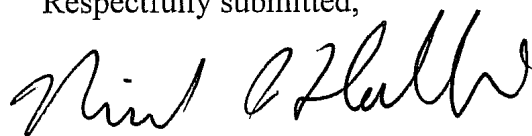
There is no disclosure, explicit or implicit, in Olivier that the drain 33 can be a gas supply. It is improper to "interpret" a reference contrary to the clear disclosure of the reference.

While the Examiner's position appears to be based on an implicit disclosure in Olivier that the drain 33 can be a gas supply (due to the fact that the Examiner fails to provide any motivation or suggestion to modify Olivier), Applicant also points out that there is no rational basis to modify the drain 33 of Olivier to serve as a gas supply.

Claims 15-17 and 62 depend from claim 1 and Claims 21, 24, and 31 depend from claim 19, discussed above. Accordingly, claims 15-17 and claims 21, 24, and 31 are patentable over the combination of Rao and Olivier for at least the same reasons that claims 1 and 19 are patentable. Reconsideration and withdrawal of this rejection is respectfully requested.

Claims 1, 19, and 22 have been amended and claims 1-8, 10-32, and 62 remain pending. For the above reasons, Applicants respectfully request allowance of all pending claims. Should the Examiner have any questions concerning this response, the Examiner is invited to call the undersigned at (408) 378-7777, ext. 112.

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